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Keynote Essay: A Modern Political Tribalism in Natural Resources Management

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ARTICLES

KEYNOTE ESSAY: A MODERN POLITICAL TRIBALISM IN NATURAL RESOURCES MANAGEMENT

Zygmunt J.B. Plater*

INTRODUCTION

The first law of ecology holds that everything is connected to everything else. This conference addresses the challenges and dilemmas of resource management policy on America's public lands, but it seems useful both for the purposes of the conference and in broader terms to note how resource management is connected to larger questions of global integrity and human governance.

This essay explores a troubling fact of modern political life: As the problems of managing the economy and ecology of this nation become ever more complex, subtly-interrelated, pressured and demanding, our processes of legal and political governance might be expected to become more integrative and comprehensive in scope. Instead, however, there often appears to be a contrary dysfunctional tendency. The more complex and stressed an issue becomes, the more its political actors retreat into a narrow insulated factionalism that can be viewed as a form of latter-day tribalism.¹

* Professor of Law, Boston College Law School. A.B. Princeton 1965, J.D. Yale 1968, S.J.D. Michigan 1982. The author has been legal advisor to the State of Alaska's Special Commission on the Exxon Valdez Oil Spill, and petitioner and lead counsel in the TVA-Tellico Dam endangered species litigation, both of which are employed as examples in this essay. Partisan status in these cases is thus hereby acknowledged. This essay is written in a personal capacity, and does not necessarily represent the position of the Alaska Oil Spill Commission. The essay developed from the keynote address delivered to the 12th Public Land Law Conference, March 29, 1990, at the University of Montana School of Law. I acknowledge with appreciation the contributions of Daniel Cronin and Carole LoConte, Boston College Law School Class of 1992, in helping to prepare this manuscript for publication.

1. "Society is being re-tribalized into prickly, irritable, elbow-throwing 'communities'." George Will, *NEWSWEEK* June 18, 1990 at p. 68. Note: You heard it first here at the Public Land Law Conference, March 29, 1990.

This essay observes a form of tribalism that is illustrated by subsequent articles and comments in

Viewing the narrowed perspectives and localized interests of contemporary natural resources decisionmaking as "tribalism" offers a useful analytical perspective on its symptoms and consequences.

Tribalism, as the anthropologists describe it, denotes the way groups of people live in a form of cohesive affiliation and narrowed community of interest, systematically including all members of that community and excluding all others as "outsiders".

Some instructive examples can hereafter be drawn from Alaska's Exxon Valdez Oil Spill, from public works water projects, and from controversies over timber management.

Initially, however, the global context and ambiguous benefits of such a tribalism might well be set out with two contrasting astronautic examples.

THE UTILITARIAN VALUE OF INTERNATIONAL AND INTERGENERATIONAL COOPERATION

David Brower, one of the founding elders of the 20th century American environmental movement, who played the title role in "Conversations with the Archdruid", John McPhee's book about environmentalism in America,² once spoke to a class of environmental law students. Standing tall in front of the class, white-haired and raw-boned with piercing blue eyes, Brower stretched out his arm, with thumb and forefinger held about two inches apart, and said:

Imagine if you will our entire planet reduced to this, the size of an egg. . . . If the planet Earth were reduced to the size of an egg, what do you think the proportionate volume of all its air, its atmosphere, would be? And what would be the total volume of the water that, along with air and sunlight, sustains life on this Earth? . . . Based on computations, the sum total of atmosphere veiled around this egg planet Earth would be equivalent to no more than the volume of a little pea wrapped around the globe. And the water? That would be no more than a matchhead, a tiny volume spread thin enough to fill the oceans, rivers and lakes of the world.³

this volume. These articles deal predominantly with issues of control of natural resource decisions; they provide abundant examples of the concept of tribalism considered here, which embraces equally the decision making activities of Native American tribes and that of more purely political tribes, such as state and federal agencies.

2. J. MCPHEE, *CONVERSATIONS WITH THE ARCHDRUID* (1971)

3. In fact, the relative scale of the mass of atmosphere and water to the planet Earth is apparently even more dramatic. According to Dr. Heinrich Holland of the Harvard Geology Department, taking the relative *masses* of Earth, air and water (as opposed to spatial area which is a misleading construct), the atmosphere constitutes less than one millionth of the planet's mass, and the water less than one thousandth. Telephone conversation with author, 12 June 1990.

Looking at the students, Brower asked,

Thinking of those limits, can you any longer not believe that our planet is a tremendously vulnerable little system, totally dependent on this fragile tissue of air and water, a thin fabric of life support made up of all the air and water the Earth will ever have?⁴

Like the astronauts who reported dramatic and startling personal reactions to their first glimpse down upon the planet Earth from their aerie in outer space, the image of Brower's egg forces us to recognize our interrelatedness with all the other human and natural systems that make up this planet. The planet is indeed one small, limited, totally self-contained entity, a single natural system (albeit made up of many interconnected systems), containing great richness and great diversity.

From this overview perspective, it is as naive to believe that the organic integrity of the planet can be artificially divided into one hundred and fifty little national legal sovereignties, each totally independent of the others, as it is to believe that any one national legal system possesses sufficient wisdom to manage the entire ecosphere. It seems a bit presumptuous, in fact, to believe that any one *species* has the capability, much less the right, to arrogate to itself a superordinate role in governing the planet.⁵ Nevertheless, even were we to develop a healthy humility in recognizing the relative limitations of humankind in the global system, Brower's egg and the image of Spaceship Earth force us to recognize that humans do have a special ability to understand the workings of human and natural systems. If the future of the planet is to be a longterm proposition in which humans continue to play a part, we must seek to exercise the role of deferential shepherds, acting in a cohesive, integrated, systematic planet-wide perspective. Decisions affecting the equilibrium and natural balance of this fragile place increasingly require comprehensive thought and cooperation.

THE UTILITARIAN VALUE OF LOCALIZED INTERESTS

A second astronautic example leads in quite a contrary direction; it arises from the annals of NASA's Challenger mission. One of the most dramatic pieces of evidence arising in the course of the congressional inquest into the shuttle disaster was the testimony of Roger Boisjoly, an

4. Brower was speaking on a beach on Mission Point peninsula in Grand Traverse Bay, Michigan, to members of an environmental law class on a field trip during a conference held at Northern Michigan University, October 1977.

5. R. NASH, *THE RIGHTS OF NATURE A HISTORY OF ENVIRONMENTAL ETHICS*, University of Wisconsin Press, Madison, WI (1989).

engineer for Morton Thiokol, the corporate shuttle contractor. Boisjoly had written a memorandum six months before the tragedy, urgently noting that the shuttle's O-rings were subject to stiffening and severe erosion in below-freezing temperatures.⁶ That memo had been buried within the corporate command structure. The day before the scheduled liftoff, however, Boisjoly and his fellow Thiokol engineers had temporarily succeeded in suspending the Challenger countdown after they, like millions of other Americans, saw on their television sets the icicles and frost conditions on the missile pad at Cape Canaveral. NASA reacted angrily to the engineers' precaution. The agency initiated a telephone conference with Morton Thiokol executives and the engineers, urging that launch procedures be restarted. The agency was seriously behind schedule in its overall shuttle program, and felt the political need for a dramatic success; the President had already written Christa McAuliffe, first teacher in space, into his State of the Union message to be delivered the following day. The Thiokol executives, moreover, were very sensitive to such pressures: Thiokol was the sole contractor on the multi-billion dollar shuttle program, but NASA had been threatening to take on a "second source" contractor for the program. The Thiokol executives put NASA's phone call on hold for five minutes, canvassed the engineers (who remained unanimously adamant that there was an urgent danger in a below-freezing launch), and then the managing executives, after a caucus amongst themselves, came back to the tele-conference and overrode their engineers' decision. There would be a lift-off the next morning after all: "We agree you have a go."⁷

The next morning millions of Americans watched the scene: the TV cameras followed the astronauts as they walked from the space center into a van waiting to take them to the launch pad: "Here comes pilot Mike Smith, followed by Christa McAuliffe, the first teacher in space. Big smiles today, confidently getting into the van"

Here is the point: can anyone believe that the shuttle launch procedure would have continued, that the astronauts would have gotten into that van, taken the elevator up the gantry and climbed into the shuttle, *if just one astronaut* had been part of that tele-conference discussion the night before? It would not have required a majority, just the inclusion of one representative of the narrowed, localized interest of the astronauts themselves, and we would not all forever have burned into our minds the image of that obscene claw of smoke and fire etched against the Florida sky.

Clearly, then, in some circumstances it is drastically important that narrowed, localized, "tribal" interests be represented at the heart of

6. 132 CONG. REC. §5272 Monday, May 5, 1986; see generally Vol. 1 *Presidential Commission Report on the Space Shuttle Challenger Accident*, November, 1985.

7. *Id.*

complex management decisions.

TRIBALISM

There is a direct parallel to these two astronautic images, and the two contrary perspectives on governance that they present, in the promise and the perils of tribalism.⁸

Any Westerner fortunate enough to have been able to live in Africa for any substantial amount of time has been repeatedly confronted by the continuing reality of tribalism. Tribalism is a cohesive instinctive affiliation between people based on their recognition of and loyalty to common roots, a narrowed, non-official, racial, social and cultural allegiance that has evolved to have remarkable staying power and utility. Tribalism can be a precious cultural commodity, helping people survive in settings of extraordinary stress, deprivation, and complex antagonisms; it is a strategic survival mechanism in much of the Third World.⁹

On the other hand, tribalism also has its perils, because the supportive mechanism of the narrow, localized tribe is derived in part from the fact of preclusiveness: people who are not of the tribe can be precluded from consideration, are not owed the same deference as human beings who are members of the tribe; they are in some sense "alien," and their interests excluded from recognition in the process of governance. Decisions are made in terms of maximizing benefits to one's own tribe.

The narrowed perspective of tribalism thus can also be destructive in diverting assets and opportunities away from sectors of society that need them,¹⁰ or even lead to violent repressions.

8. This essay introduces the concept of tribalism to help understand the dynamics of modern government in general and natural resources management in particular. Taking a lead from anthropologists, there are many more lines of analogy that might be developed: the mechanisms of loyalty displayed within a tribe in order to show belonging; tribal alliances and blood feuds; territorialism; and the like. Further development of this fertile analogy is beyond the scope of this essay. It is nonetheless useful even in shorthand form to emphasize the current divisiveness that exists within what must ultimately become a functionally coordinated interdependent democratic polity.

9. The author taught for three years on the law faculty of the Haile Sellassie University in Addis Ababa, and travelled extensively in twenty African countries during that time. Though most of the author's observations took place in Africa, further travels in Latin America, the Middle East, and Asia indicate that the phenomenon of tribalism is not restricted merely to the African sector of the Third World.

10. On a number of occasions it has been disturbing to Western observers to see technocratic and meritocratic theories of building infrastructure in developing countries undercut by processes of nepotism and affiliation on tribal grounds, without regard to the functional needs of the developing national system. Government officials who are university graduates may have attended school for years with a cohort of highly-trained comrades, yet feel constrained to advance barely-literate villagers of their own tribe when the opportunity for appointments arises.

TRIBALISM IN THE DEVELOPED WORLD

A return from the Third World to modern industrial democracies, however, does not necessarily mark a departure from confrontations with the phenomenon of tribalism. Experience in many Western capitals, and particularly in Washington, D.C., the capital of the brawling media-ocracy that is the United States, rapidly reveals that power is deployed in processes that far more closely resemble tribalism than they do the model of decisionmaking found in 8th grade civics books. Modern politics is characterized in many theaters, including natural resources management, by battle-lines of narrow single-issue combatants and victories of factionalism. A characteristic of tribalism that separates it from mere civic groupings within the body politic is its members' intense sense of internal identification and loyalty, one with the other, amounting to a broad and cohesive extended familyhood, with, moreover, a sense that all share in the advancement of tribal interests as a common mission and top priority, with little or no consideration of the existence of interests outside the tribe. Many modern political factions, in the resource field and otherwise, share that intense preclusive sense of identification and mission that resembles a tribal allegiance, with diminished concern for the interests of "outsiders" or the nation. It would seem quite realistic for a political anthropologist in Washington D.C. to discern the existence of a Sun Belt tribe and a Rust Belt tribe, an Urban tribe and a Farm Country tribe, a Pork-barrel/public works subsidy tribe and an Environmental tribe, a Pro-life tribe and a Pro-choice tribe, and perhaps others — a Black tribe and a White tribe and so on — sometimes overlapping, but each functionally separate.

To some extent these tribes have helped make their sectors of the American economy and government flourish, but it is clear as well that such tribal divisions often operate so as to emphasize narrow benefits and privileges to the net detriment of the nation as a whole.

In an unfortunate paradox, moreover, this preclusive tribalistic inclination seems to increase the more that there are strains, adversities and limitations upon the resource system, in precisely those situations where increased integration and cooperation would appear to be most necessary.

LOCAL TRIBALISM AND ITS VIRTUES: ALASKA

On Thursday night, March 23, 1989, two parallel processes were going on in the little port town of Valdez, Alaska. The M/V Exxon Valdez was tied up at the Alyeska terminal, which is chiselled into a rocky mountainside at the tip of the Valdez fjord, where the Trans-Alaska pipeline terminates. The Exxon Valdez was loading 53 million gallons of Alaskan crude for the trip to the refinery at Long Beach, California. The

pipeline and terminal were managed by Alyeska, an international consortium of seven global oil companies. According to Alyeska procedures, the vessel was being loaded by its own crew. Loading is a perilous job,¹¹ but, as a cost-saving measure, shipping divisions of some of the oil companies eliminated the designated crew members entrusted with vessel loading (or made the decision not to hire crew for that function in the first place). Wherever Captain Joseph Hazelwood may have been that evening,¹² the loading process was completed according to normal practices at the Alyeska terminal, and shortly before midnight, with the captain and an exhausted crew aboard, the ship weighed anchor and began to move out through Valdez Arm.

The same evening, at a meeting in the civic center in Valdez, local citizens were discussing their worries about the safety of the oil consortium's management of the oil transportation system. Most notable in the group were the fishermen, who lived and worked around Prince William Sound and had long been involved in efforts to improve the planning and supervision of an industry of such tremendous potential, both positive and negative, for the economy of Alaska. The Cordova District Fishers United (CDFU) presented a catalogue of their specialized critical concerns about management of the terminal, loading practices, navigation hazards, and the like. Alyeska was allowing tankers to be loaded with crosswinds of 50 and 60 miles an hour, pollution control measures on land and on water were insufficient, contingency response capabilities were out of commission, the Coast Guard's maritime traffic control system was voluntary instead of mandatory, and the Coast Guard's radar equipment could not adequately keep track of vessels in many of the hazardous portions of the Sound. "As we look at the oil business tonight," said Frederika Ott, a fishing boat

11. If oil is loaded into the wrong compartments in the wrong order, the single-hulled vessels, which are highly stressed to support the structure of the ship, may bend up or down amidships and even snap in two, destroying the vessel and causing a massive spill. The oil is often loaded directly into the ships from the pipeline, at 140 degrees, fizzing with the natural gases that build up in it during transit. By allowing these gases to discharge out through the tank compartments of a vessel, Alyeska avoids the air pollution controls otherwise mandated for storage of oil at the Valdez land facility. One of the serious consequences of forcing the crew to manage its own vessel's loading is that, as in this case, officers who must take on the heavy workload of navigating the ship in its subsequent passage through Prince William Sound can be exhausted by their previous duties and efforts in the loading process. For a general analysis of the case, see A. DAVIDSON, *IN THE WAKE OF THE EXXON VALDEZ*, Sierra Club, 1990.

12. The findings of the Alaska Oil Spill Commission make clear that whatever the captain's shortcomings, the Exxon Valdez oil spill was an accident that was bound to happen; the combination of regulatory and corporate complacency, crew fatigue, insufficient personnel, insufficient radar, and insufficiently rigorous loading practices, as well as insufficient response preparations, created the preconditions for predictable spill disasters in the oil transport system. *Spill, the Wreck of the Exxon Valdez, Implications for Safe Transportation of Oil*, Report of the Alaska Oil Spill Commission, Executive Summary, February 1990, at IV.

skipper and marine biologist, "it is not a question of *if* an accident will happen, it is only a question of *when*."¹³ And, sadly, "when" came only two hours later.

In the aftermath of the Exxon Valdez disaster have come a parade of sad images — oil-soaked wildlife, stained rocks and beaches, fishing boats tied up dormant at the docks, and corporate and governmental haplessness.

The fishermen of Prince William Sound watched in the hours after the wreck on Bligh Reef as eleven million gallons poured out into their waters. On Friday morning, some of them hired a small airplane to fly out from Cordova to survey the wreck. "It was eerie," said Riki Ott. "On the radio, the whole world was talking about the disaster. People in the lower forty-eight were busily planning volunteer cleanup and animal rescue units to support the official response forces, but here in Prince William Sound lay the Exxon Valdez completely quiet, surrounded by a pool of oil a mile across, with blue fog vapors rising from it, just a few people standing on the deck, shaking their heads, looking at this catastrophe, *and no one out there doing anything* on the water."¹⁴ That morning, nine hours after the spill, the fishermen could fly around the oil slick in only eight minutes. And they waited, watching, expecting the official governmental and corporate mechanisms to jump into action, as so often promised in contingency plans, political representations, and courtroom proceedings.¹⁵ For almost forty hours, the weather of Prince William Sound was uncharacteristically generous. The normal winds of March were nowhere to be seen; the seas were calm and the oil stayed in a compact floating mass near the Exxon Valdez. But no one showed up with the necessary skimming barges, the containment booms, the storage materials and clean-up equipment so confidently promised earlier. And then at the end of the second day, the winds came back with a vengeance. One fisherman looked up from Valdez Sunday afternoon and saw a ribbon of snow blowing off the shoulder of one of the mountain peaks. "Uh-oh," he said, "there it goes," and within 24 hours the oil had blown forty miles southeastward, out of control forevermore, as the official players still continued to try to figure out what to do.

The Alyeska spill made the truth painfully evident. The official

13. *Id.* at 1, citing Dr. Frederika Ott's testimony before the House Committee on Interior and Insular Affairs Hearing, May, 1989.

14. Paraphrase of personal conversations with the author and Dr. Frederika Ott, December, 1989.

15. "I think the navigational problem here has been overblown," said Capt. W.E. Murphy, one of three Alaskan pilots on the bridge of the ARCO Fairbanks during its first trip through the narrows.

"The Alaskan pipeline represents the greatest single leap forward in the art of environmental preservation and protection."

All About the Pipeline Its Design. . . Costs. . . Risks, Interview with Edward L. Patton, Chairman, Alyeska Pipeline Service, U.S. NEWS & WORLD REPORT, June 20, 1988 at 36.

“overview” participants in the public and corporate national level organizations were grossly inattentive to the real dangers, and unprepared to cope with the foreseeable consequences of their laxity.¹⁶ Within 24 hours Exxon had to take over command of the response operation, but Exxon had never been trained to do so; the Coast Guard and the oil companies had trusted everything to Alyeska, as had the state of Alaska.¹⁷

After two days of watching in abject disbelief, the fishermen forced themselves into the matter. That evening they went into a meeting of the official players — the Exxon Corporation, Alyeska, the Coast Guard, the State of Alaska DEC — and found that the official command center still did not know exactly what it would do. Spread out on the table were charts of Prince William Sound, surrounded by worried officials. “Given the wind and the currents now where are you going to target your response?” asked the fishermen. It rapidly became clear that the official command center did not have a strategy for prioritizing the response efforts; the people around the table did not even seem to know which way the currents flowed in Prince William Sound. So the fishermen, the uninvited unofficial participants in the meeting, rolled up their sleeves, charted for the officials where the oil in all likelihood was going to go. They identified the fish hatcheries, the rookeries and spawning areas, the seal pupping grounds, the most valuable vulnerable places for which protection should be attempted in an initial triage of available efforts. “Forget Knight Island, it is too late. Focus on Main Line Bay, Sawmill Bay, Esther Island . . .” When the government and corporate officials confessed that they had insufficient equipment available to deploy containment booms at the priority sites, the fishermen went to their radio telephones, and by eight the next morning a flotilla of fishing boats had arrived at the most threatened areas ready to lay boom.

The lesson of this localized Alaska tribalism is quite clear: Who really knew the practical circumstances and dangers of the oil transport systems? Who knew what was going on? Who was prepared to do something about it? And by the same token, before and after the wreck, note how those same “who’s” had been excluded from the official decisionmaking process.

One of the primary recommendations of the Alaska Oil Spill Commission, enacted by the legislature in May, 1990, was to set up an oversight board with participation by local informed citizens, notably including the

16. Alyeska turned out not to have the barge that had been promised to be always on station to service the skimming operations, there were insufficient booms available, there were insufficient personnel who knew how to operate the equipment. *Final Report*, *supra* note 12, at 17-18.

17. To supervise and police all operations at the Valdez terminal, including water and air pollution, loading, pipeline storage, integrity of the tank storage facility, and other duties, the state of Alaska’s Department of Environmental Conservation had deployed exactly one-half of one full-time field person. The DEC staff at Valdez has since been augmented.

local fishermen of Prince William Sound.¹⁸ Without their localized expertise, and the force that comes from that localized perspective, the overview process for that resource management system would be sadly deficient.

ANOTHER TRIBALISM: THE PACIFIC NORTHWEST'S YELLOW-RIBBON TIMBER-CUTTERS

A second example can be drawn from the ongoing debate over the cutting of our last ancient forests in the Pacific Northwest.¹⁹ A debate has been raging, exacerbated by the Reagan years, over the process of allowing private lumber corporations to clear-cut old-growth forests owned by the U.S. Government.

The timber industry has argued for years that it is a renewable resource industry, replanting as it cuts. Scientific accountings of the public lands forestry processes have increasingly revealed, however, that given the accelerated rate of cutting, the clear-cutting method, the large but unheralded political and financial subsidies, and an increasing awareness of the ecological functions of a balanced natural forest, the timber industry in fact operates as an *extractive* industry, mining the public lands at what well may be a net national loss in order to supply raw materials for foreign importers.²⁰

The failure of the replantation argument is evident in the fact that the timber companies continue to turn to the virgin forests of the public lands, because they cannot sustain their industry on the replantations of private and public land so widely touted over the past fifty years. A natural forest, sustained through careful timber cutting practices, provides benefits far in excess of a clear-cut and replanted tree-farming operation, which is the mode still being pushed upon public lands by the industry. It is not just biological diversity that is destroyed when an ancient forest is clear-cut. As research in the Siskiyou National Forest demonstrates, the natural forest system has a specially-evolved diversity of plants, fungi and animals that

18. S. Bill No. 578, § 24,20.600, *Citizen Oversight Council on Oil and Hazardous Substances* provides for a committee with the duty to investigate and report findings; it is invested with subpoena powers to carry out its assigned mandate.

19. This controversy can be reviewed in D.KELLEY & G. BRAASCH, *SECRETS OF AN OLD GROWTH FOREST*, Peregrine Smith Books, Salt Lake City, 1988, and has been the subject of the Western Public Interest Law Conference held at the University of Oregon School of Law in past years.

20. In fiscal year 1987, the United States government budgeted \$253 million for logging road construction, wholly unreimbursed by the timber industry. The expense of constructing logging roads typically exceeds the revenues from timber sales in these areas. *Christian Science Monitor*, Sept. 30, 1987, at 13. In Alaska's Tongas National Forest, for example, the government has lost 93 cents on every dollar it has spent on the timber industry, with losses exceeding \$50 million annually. *THE NEW REPUBLIC*, May 26, 1986, at 15. There may be some ongoing change in these Congressional subsidy policies. UPI, June 13, 1990.

allow it to maintain its water balance through the regular hot dry months, during which replanted tree farm areas suffer the pangs of drought.²¹ Natural forests, moreover, contribute a significantly greater amount of oxygen recharge to the global atmosphere.²²

And where is the tribalism? The most vivid tribalism evident in the ancient forests is that of the community of loggers. The Northwest's timber-cutters have taken a yellow ribbon tied to the truck antenna as their tribal marking, and have united in impassioned efforts to override environmental accounting arguments, to continue public subsidies, and informally to exterminate the western spotted owl — an endangered species that has served as the legal trigger for attempts to slow down the extirpation of the last ancient forests of the Northwest.²³ With mass gatherings of lumbering trucks, strident posturing on the roads and in the capitals of the Northwest, the yellow-ribbon timber-cutters have forcefully argued their special perspective on timbering. "Shoot an owl, save a job." Or more subtly, "Logging is all our community has. It may be that the old forests can be wiped out in four years, but what is more important, trees and owls, or people? Give us four more years of meeting our mortgages and by just that much you will prolong our absence from the welfare rolls."²⁴

This tribalism too has validity and importance, but it makes clear that localized interests can play very different roles in the appreciation and resolution of resource management controversies.

CONTENDING TRIBES: THE TVA TENNESSEE EXPERIENCE

A third example of tribalism can be drawn from the Tennessee Valley region of the United States over the last twenty years of TVA dam building, and in particular from the Tellico Dam controversy, which ran from 1963 to 1980. One tribe was made up of the "river people" in that case, the farmers whose families who had settled and lived for generations on the rich deep loams of the Little Tennessee River valley lands, the Cherokee Indians, who still revered those waters and the valley as a place to gather medicine, and the sportsmen who cherished the finest big river trout fishing in all the eastern United States. Each of these groups lived a

21. New York Times, June 12, 1990 at C1 col. 6.

22. SCIENCE, March 1990; THE NEW YORKER, May 14, 1990; Gup, *Owl v. Man; In the Northwest's Battle over Logging, Jobs are at Stake, but so are Irreplaceable Ancient Forests*, TIME, June 25, 1990, p. 56.

23. See *Portland Audubon Society v. Lujan*, 884 F.2d 1233 (9th Cir. 1989); *The Wilderness Society v. Tyrrel*, 701 F.Supp. 1473 (E.D. Cal. 1988); *Oregon Natural Resources Council v. Mohla*, 895 F.2d 627 (9th Cir. 1990).

24. These statements are paraphrases of yellow-ribbon rhetoric. Cf. "I love spotted owls. . . FRIED;" "If it comes down to my family or that bird, that bird's going to suffer." TIME, June 25, 1990 at 60.

significant part of their lives along the Little Tennessee River, the last remaining thirty-three miles of high quality flowing water left in eastern Tennessee. This community was sharply distinguished from and rejected by the TVA tribe. To the TVA leadership, supported by an intricate social and political network in the local political and business leadership, the Tellico Dam proposal as the last of sixty-nine TVA dams²⁵ was a redemptive opportunity to recapture the momentum and mission that had made TVA the dominating presence in its seven-state region since the days of the Depression. The citizens repeatedly tried to block the dam on the argument that it could not justify itself in economic terms: no generators, no significant flood control or water supply functions, a ludicrous argument that the lake would attract 20,000 jobs to a chimerical hypothesized model city, and in reality the project would only accomplish the loss of a critically rare and valuable remnant stretch of river in a system of impoundments stretching muddily more than a thousand miles through the Tennessee heartland. The TVA tribe resisted those arguments in every way possible, minimizing the value of the farmlands to be taken out of production, and emphasizing a hoard of benefits alleged to derive from one more in a chain of dams. Ultimately, the citizens were able to prove their case in every aspect of the cost-benefit-alternatives analysis,²⁶ but they lost.²⁷ After eight years of intensive participation, one player can look back and say that in retrospect the overt merits of the public debate were actually quite beside the point. To the TVA tribe, it was known and did not matter that the dam itself would produce far fewer benefits to the local and regional economy than would preservation and development of the river valley. Rather, to TVA and its congressional allies, the net benefits to the tribe itself in terms of subsidies, political aggrandizement, and organizational momentum, were the only significant factors to be considered, and the net costs and disbenefits elsewhere in the accounting were really quite

25. See W.B. WHEELER AND M. J. McDONALD, *TVA AND THE TELLICO DAM*, (1986). See also Plater, *In the Wake of the Snail Darter: An Environmental Law Paradigm and Its Consequences*, 19 J. LAW REF. 805 (1985); Plater, *Reflected in a River: Agency Accountability and the TVA Tellico Dam Case*, 49 TENN. L. REV. 747 (1982). The author was petitioner and counsel for plaintiff citizens in the last years of the Tellico Dam case from 1974 to 1980; in the Department of Interior proceedings (while teaching at the University of Tennessee College of Law); in court, *Hill v. TVA*, 419 F.Supp. 753 (E.D. Tenn. 1976), 549 F.2d 1064 (6th Cir. 1977), 437 U.S. 153 (1978); in the Cabinet-level interagency Endangered Species Committee; and in various proceedings in the 94th, 95th, and 96th Congresses.

26. After an intensive cabinet-level economic review of the project in 1978, after 12 years of project expenditures, Charles Schultze, Chairman of the President's Council of Economic Advisors and a member of the review panel was still able to find that "here is a project that is 95% complete, and if one takes just the cost of finishing it against the [total project] benefits, and does it properly, it doesn't pay, which says something about the original design!" Endangered Species Committee Hearing, Jan 23, 1979 (unpublished transcript of public hearings), 49 TENN. L. REV. 747, 774 (1982).

27. Senator Howard Baker, who had called for the cabinet-level economic review, ultimately overrode its verdict with an appropriations rider. See 19 J. LAW REF. 805 at 813-14 n. 32 (1986).

irrelevant.

As so often in contending tribal situations, there was no way to accomplish a rational mediation between the two tribal perspectives in the Tellico controversy. The premises and the accounting of values and goals were so diametrically opposed that the players were forced into unalterable opposition; one would win and one would lose. This is not to say that one tribalism in the Tellico case was completely legitimate and one was not. Each had a perspective to contribute and a functional role to play. The trick is to figure out how to take the fervor and expertise of each of the tribalistic components and use that energy and information in an overall integrated and cohesive regimen of rationality in making natural resource decisions.

THE BENEFITS AND DISBENEFITS OF NATURAL RESOURCE TRIBALISM

In each of the examples noted,²⁸ tribalism has certainly created benefits, particularly for those who make up the tribe. It appears to be a completely functional instinct on the part of many of us, when faced with the complexity and stresses of modern politics and economics, to seek out a narrower affinity rather than to trust to some broader community. Even today, tribalism functions as a utilitarian phenomenon rather than a mere atavistic throwback. If we wish to be heard, and to have our interests reflected in governmental decisions, we trust more to the focused pressures of our affiliated tribe than to the marginal weight of the collective consciousness of each person's single vote in a ballot box. And looking at the cohesion of the Alaska fishermen, the yellow-ribbon timber-cutters, the embattled farmers and fishermen in Tennessee, and TVA's dam-booster crew, it is clear that the group loyalty and dynamics generated in each of those affiliations gave power and clarity to its members' perspective in a way far more powerful than an ordinary civic grouping within the ordinary body politic would have presented.

There is, however, a countervailing peril in tribalism. One of the fundamental tragedies of Third World societies is that the nature of tribalism — by definition a narrowed, non-comprehensive, preclusive affiliation — seeks to dominate and preempt all other interests. In African societies, for instance, tribalism is optimally successful in societal terms only when there is essentially just one tribe constituting the population of the nation state (or where there are many diverse small tribes, and no single large tribal bloc, so that the preclusive effect of tribalism cannot undercut the need for comprehensive rationality within the polity.) Tribalism may

28. These three examples are not presented as special occurrences. To the contrary, most observers of modern America can undoubtedly identify other perhaps even more vivid examples of how groups have come to operate as tribes within the context of American resource decisionmaking.

bring important information and policy considerations into a decision, but if it completely dominates the decision, its effects will only be rational in terms of the interests it represents. All tribal localisms have a valid place in the consideration of resource decisionmaking; the problem is to what extent a tribal localism should be accorded dominant or determinative weight in a decision, as for instance the timber-cutting tribe has so clearly dominated U.S. forest policy for decades.

When we review the resource management tribes, we must make the analytical distinction: In which cases do the tribalisms present net affirmative results in achieving overall rationality, so as to maintain the integrity of the unitary resource system over time? And in which cases do the tribalisms, although presenting valid considerations in any decision, produce net negatives in their ability to skew the necessary comprehensive rationality?

In the examples presented above it is undoubtedly clear which tribal initiatives the author considers to pose net benefits, and which net disbenefits; those tribes which agree with the author's own political positions are positive, and the others are negative. A more value-neutral basis seems desirable, however, for defining some general standards for assessing, weighing, and incorporating the different tribalisms, according to determinative weight to some and not to others.

HOW TO ASSESS THE TRIBALISMS' APPROPRIATE ONGOING ROLES?

Some observers would pose normative standards in making such assessments. Lou Gold, the hermit of Bald Mountain in the Siskiyou National Forest who has taken on a national role in publicizing the depredations and subsidies involved in clear-cutting our remaining ancient forests, states directly that any group that is defending biological integrity is correct, and any that undercuts biological integrity is incorrect.²⁹ Gold's position has much to recommend it, especially for those who are already convinced of its ecological premises, but in institutional terms there may be a more broadly consensual, procedurally-oriented test for the proposition.

Another way to achieve a basis for the assessment of tribalism might be to remind oneself of a formulation that was part of the land-use debates of the 1970's: the principle that land-use decisions, and by extension resource decisions, should be made at the lowest level of public decision-making capable of making a fully rational decision. In many cases, this may well be the village or township level. In other cases, however, of course, it was clear that the lowest level at which decisions could be made with comprehensive rationality might actually be at the national or interna-

29. Conversation with the author, March 2, 1990, Eugene, Oregon.

tional level, in the United Nations or some other supra-national forum, an unrealistic though useful reminder of the interconnectedness of things.³⁰ The danger with the formulation is that it may lose sight of the valid and important inputs of localism.

Building upon that formulation, however, here is another way to attempt an assessment standard: all tribal localisms should be regarded as presumptively valid, but they should be given determinative weight only insofar as the local tribe has learned to integrate its perspective into the terms of reference of the comprehensive whole.

Why is it that the author believes that the tribal grouping of fishermen in Alaska's Prince William Sound and farmers and fishermen in Tennessee represented a more reliable localized input into the decisions with which they were involved, than the yellow-ribbon timber-cutters of the Northwest and the dam boosters of East Tennessee?³¹ It is clear that the different tribes played very different procedural roles in the degree to which they did or did not integrate their localized perspective into the overarching values and logic of the resource decisions being made.

In Alaska, the distinction was quite clear. The local tribalists of Prince William Sound possessed extraordinary breadth and sophistication in their approach to oil transportation safety, both before and after the disaster. The fishermen did not take a position of absolutist denial of the pipeline and maritime transport of oil, but rather weighed their concerns in the context of Alaska's and the nation's need for hydrocarbon energy resources. They accepted these broad necessities after determining that the development of the resource was not completely antithetical to the sustained viability of the eco-system of Prince William Sound. They focused comprehensive attention on the details of making the system work as it should. Their localized expertise focused on the requirements and problems of safety in the management of the pipeline, storage and loading of oil, and vessel traffic outbound to refineries in the lower forty-eight. After the oil spill the fishermen focused much of their effort on protecting bird rookeries and seal pupping areas. These had nothing to do with supporting their fishing industry; in fact, seals and birds eat fish that fishermen would rather catch. The fishermen, however, integrated the importance of the tourist industry in Prince William Sound into their own perspective, along with apprecia-

30. See Gro-Harlem Brundtland, et al. *Our Common Future*, Report of the United Nations World Commission on Environment and Development (1987).

31. Again one must seek a rationale beyond the fact that the former were directly or effectively the author's clients; or that the former represent renewable, sustainable resources, while the latter both represent extractive depletion models of resource management.

In part the tribal examples presented are unrealistically easy to categorize. The fishers of Prince William Sound and the river people of East Tennessee were dealing with a truly renewable, sustainable resource, while the timber cutters and dam boosters were not.

tion of the importance of the Gulf of Alaska's ecological integrity. Their position, in short, incorporated the goals and values of the larger resource decision-making system, and proceeded from that point. The river people in Tennessee took the putative national and regional goals of the TVA projects — economic development and recreation — and showed how they would not be achieved by the official plan, and would be far better achieved by a river-based management plan for the valley.

On the other hand, the rhetoric of the timber-cutting tribe resolutely resists incorporating a recognition of the overall economics or ecology of the national forests, rather casting its passions in terms of its own members' jobs, and the purported triviality of the spotted owl as a species. The dam-booster likewise based their arguments on mockery of the snail darter as an endangered species, with a resolute refusal to incorporate serious economic accounting into the arguments they presented.

From this perspective one can make at least tentative steps toward assessing the reliability of a tribalism as it is involved in natural resources management decisions. The tribalism that speaks only in its own localized terms is, of course, still to be listened to. Such narrowed declamations, however, either imperil the overall rationality of the process if those voices dominate, or else implicitly rely upon someone else to integrate them into the overall decision-making construct. Such localized voices, in other words, invite unnecessary condescension, casting the localized participants into a role which is unnecessarily less than such parties could play.

Ultimately then, the distinction perhaps comes down to a perplex of pluralistic democracy. A diversity of tribal voices is critically important to coping with the breadth and depth of complex realities we face on the planet. But tribal voices are inherently unreliable, unless they can cultivate an instinct for the integration of external views. Ultimately, of course, we might aspire to rise above tribalism. A triumphal process of research, intellectual analysis, and forward-looking coordination of human activities, necessarily encompassing an overarching comprehensive rationality, is certainly one of the implicit objectives of futurists, academics, political philosophers, and our own profession. But perhaps that asks too much of human nature and the human intellect. As Shaw said, socialism doesn't work because it would take too many evenings. Perhaps it is more practical to seek to develop, as Aldous Huxley suggested, a worldwide tribalism, where we would all feel atavistic membership in a single global tribal order. Tribalism, if we all feel ourselves part of the same tribe, would get us to the same destination of an integrated organic planetary rationality.

REPRISE

The goal is clear when you think of our fragile little globe flying through the vacuum of eternity. In striving to mediate a consciousness of

natural realities with the inherited limitations of our legal system and the fragmented tribalistic structure of our society, we in the field of natural resources can feel ourselves at the cutting edge of resolutions that must be developed for tomorrow.

A straightforward recognition of the perils and the promises of our instinctive tribalism is an inevitable part of that process. Consider again the dramatic year 1989 in Eastern Europe. The flowering of the energies of tribalistic allegiances served to isolate and topple a monolithic system that had burdened a continent for fifty years. At the same time, we must recognize the divisiveness that those energies unleashed, between Hungarians and Romanians, Ukrainians and Poles, Uzbeks and Kirghiz, and we must wonder how the antagonisms implicit in that diversity can be mediated. Internationally, one of the most serious constant stumbling blocks for international environmental initiatives has been the powerful divisiveness of national sovereignties. Up until last year, one of the most hopeful experiments in solving the sovereignty dilemma was the European Community, increasingly tending toward a supra-sovereignty in resolving shared interrelated problems. Can that experiment in integration survive the nationalistic fervor unleashed in 1989 in Eastern Europe and the resurrection of the German nation? The trend previously was clear: The European Community's environmental policies were going to act as a matrix model for the rest of the world. And now the passions of that process may be going in the opposite direction. Akin to tribalism, resurgent nationalisms are a part of the problem as well as part of the solution.

It is a familiar conundrum, a basic problem of democracy: how to hold on to our disparate richness and diversity, while maintaining the international and intergenerational cooperations that are necessary for six billion of us, soon to be ten billion of us, to manage a sustainable future for our planet. Our efforts toward enlightened resolution of natural resource questions, then, are a part of the puzzle, and are ultimately relevant as well to the future of pluralistic democracy and the planet.

So that is our challenge, our duty, and our aspiration, as we tenderly try to conserve our fragile little egg, and pass it on.

